



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 15, 2014

REPLY TO THE ATTENTION OF:

LC- 8J

CERTIFIED MAIL No.7009 1680 0000 7674 3792
RETURN RECEIPT REQUESTED

Mr. Roger Burgess
Two Guys and a Grow Shop, LLC
11917 East Lennon Road
Lennon, Michigan 48429

Consent Agreement and Final Order In the Matter of
Two Guys and a Grow Shop, LLC, Docket No. **FIFRA-05-2014-0029**

Dear Mr. Burgess:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on September 15, 2014, with the Regional Hearing Clerk.

The civil penalty in the amount of \$1,000 is to be paid in the manner described in paragraphs 28 and 29. Please be certain that the docket number is written on both the transmittal letter and on the check. Payment is due by October 15, 2014 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Terence Bonace", is written over a printed name.

Terence Bonace
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:

Two Guys and a Grow Shop, LLC
Lennon, Michigan,

Respondent.

) Docket No. FIFRA-05-2014-0029
)

) Proceeding to Assess a Civil Penalty
) Under Section 14(a) of the Federal
) Insecticide, Fungicide, and Rodenticide
) Act, 7 U.S.C. § 136l(a)
)

Consent Agreement and Final Order

Preliminary Statement

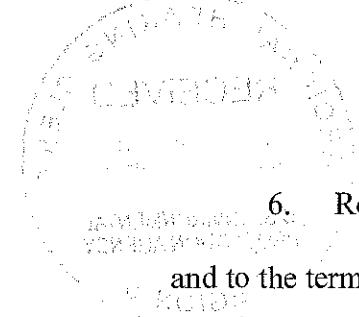
1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. The Complainant is the Director of the Land and Chemicals Division, U. S. Environmental Protection Agency, Region 5.

3. Respondent is Two Guys and a Grow Shop, a limited liability corporation doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.



6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136-136y.

Statutory and Regulatory Background

10. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3 of FIFRA, 7 U.S.C. § 136a.

11. The term “distribute or sell” means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.” 7 U.S.C. § 136(gg).

12. A “pesticide” is, among other things, any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u).

13. A “pest” is any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism which the Administrator of the EPA declares to be a pest under Section 25(c)(1) of FIFRA. 7 U.S.C. § 136(t).

14. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if the person who distributes or sells the substance claims, states,

or implies (by labeling or otherwise) that the substance can or should be used as a pesticide.

40 C.F.R. § 152.15(a)(1).

15. The Administrator of EPA may assess a civil penalty against any registrant, commercial applicator, wholesaler, dealer, retailer, other distributor who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violation

Factual Allegations

16. Respondent is a “person” as defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

17. Respondent owned or operated a place of business located at 11917 East Lennon Road, Lennon, Michigan during the calendar year 2013.

18. On March 26, 2013, an inspector employed by the Michigan Department of Agriculture and Rural Development (MDARD) and authorized to conduct inspections under FIFRA conducted an inspection at Respondent’s place of business in Lennon, Michigan.

19. During the March 26, 2013 inspection, the inspectors learned that Respondent was distributing the unregistered pesticide, Mite-Rid.

20. The label of Mite-Rid states, “For the effective treatment of two spotted mite and red spider mite.”

21. Two spotted mites and red spider mites are “pests” as defined at Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

22. Mite Rid is a “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

Alleged Violation

23. Complainant incorporates by reference the allegations contained in paragraphs 1 through 22 of this Consent Agreement and Final Order.

24. Respondent was offering for sale Mite-Rid at its store in Lennon, Michigan at the time of the March 26, 2013 inspection.

25. Mite-Rid was not registered as a pesticide with EPA under Section 3 of FIFRA, 7 U.S.C. § 136a, on or about March 26, 2013.

26. Respondent's distribution or sale of the unregistered pesticide Mite-Rid constitutes an unlawful act pursuant to Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

Civil Penalty

27. Pursuant to Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), Complainant determined that an appropriate civil penalty to settle this action is \$1,000. In determining the penalty amount, Complainant considered the appropriateness of the penalty to the size of Respondent's business, the effect on Respondent's ability to continue in business, and the gravity of the violation. Complainant also considered EPA's FIFRA Enforcement Response Policy, dated December 2009.

28. Respondent must pay a \$1,000 civil penalty in two installments with interest as follows: \$500.83 within 30 days of the effective date of this CAFO; \$502.50 within 210 days of the effective date of this CAFO.

29. Respondent must pay the installments by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Post Office Box 979077
St. Louis, Missouri 63197-9000

Or, for checks sent by express mail, the Respondent shall send a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, Missouri 63101

The checks must state "In the Matter of Two Guys and a Grow Shop, LLC" and the docket number of this CAFO.

30. Respondent must send a notice of payment that states Respondent's name, complete address, and the case docket number to EPA at the following addresses when it pays the penalty:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Terence Bonace (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Boulevard.
Chicago, Illinois 60604

Mark J. Palermo (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

31. This civil penalty is not deductible for federal tax purposes.

32. If Respondent does not pay timely the civil penalty, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States

district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

33. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

34. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

35. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

36. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state and local laws.

37. This CAFO is a "final order" for purposes of EPA's FIFRA Enforcement Response Policy.

38. The terms of this CAFO bind Respondent, its successors and assigns.

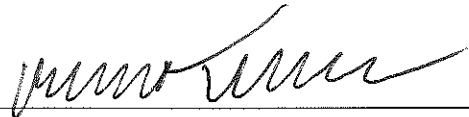
39. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

40. Each party agrees to bear its own costs and attorneys' fees, in this action.

41. This CAFO constitutes the entire agreement between the parties.


Two Guys and a Grow Shop, LLC, Respondent

8 - 20 - 14
Date


Roger Burgess
President
Two Guys and a Grow Shop, LLC

United States Environmental Protection Agency, Complainant

9/4/2014
Date


Margaret M. Guerriero
Director
Land and Chemicals Division


In the Matter of: FIFRA-05-2014-0029
Two Guys and a Grow Shop, LLC
Docket No.



Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9-10-2014
Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

CERTIFICATE OF SERVICE


I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Two Guys and a Grow Shop, LLC, was filed on September 15, 2014, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7009 1680 0000 7674 3792, a copy of the original to the Respondent:

Mr. Roger Burgess
Two Guys and a Grow Shop, LLC
11917 East Lennon Road
Lennon, Michigan 48429



and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Mark J. Palermo, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD


Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. **FIFRA-05-2014-0029**

